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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: MAR 11 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the daughter of a naturalized United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her U.S. citizen children.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Acting District Director, dated February 11, 2003.

On appeal, counsel states that the applicant's former attorney failed to submit sufficient evidence in support of her application. Current counsel states that the applicant filed a complaint with the California State Bar against former counsel because of her ineffective assistance. Current counsel requests a sixty-day extension in order to submit sufficient evidence on behalf of the applicant. *See* Form I-290B, dated March 12, 2003. The AAO notes that 11 months have elapsed since counsel requested an extension and no additional documentation has been received. A decision will therefore be rendered based on the record as it currently stands.

The record contains copies of court documents relating to the applicant's criminal record; copies of financial and tax documents for the applicant and her mother; a copy of the naturalization certificate of the applicant's mother; a translation of the birth certificate of the applicant; verification of the applicant's employment; copies of the U.S. birth certificates of the applicant's children; letters of support; copies of documents evidencing scholastic performance by the applicant's children and a letter from the applicant's mother, dated May 19, 2000. The entire record was considered in rendering a decision on the appeal.

The record reflects that on December 8, 1992, the applicant was convicted of Theft of Property. The applicant was placed on summary probation for a period of 12 months and served 10 days in the Los Angeles County Jail. On April 12, 1995, the applicant was convicted of Petty Theft with Prior Jail Term and False Representation of Identity to a Peace Officer. The applicant was sentenced to formal probation for a period of three years and served 120 days in Los Angeles County Jail.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

. . . .

> (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant herself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The applicant's mother asserts that the lives of the applicant's children would not be the same without the applicant. The applicant's mother predicts, "A separation at this time could cause damage to the excellent academic record of the children, could cause behavioral problems or may bring any other bad consequences to this family." *See* Letter from Yolanda Iraheta, dated May 19, 2000. Speculative statements unsupported by factual representation do not form the basis of a finding of extreme hardship. The predictions of the applicant's mother regarding what may happen to her grandchildren if the applicant departs from the United States are not substantiated in the record. Further, the record does not establish that the children could not return to El Salvador in order to remain with their mother. The AAO notes that, as U.S. citizens, the applicant's children are not required to depart from the United States as a result of the denial of the applicant's waiver application. However, remaining with the applicant would alleviate the problems that the applicant's mother fears would occur if they were separated.

The record makes no assertions regarding hardship to the applicant's mother resulting from the applicant's inadmissibility to the United States. The record does not address the factors identified in *Matter of Cervantes-Gonzalez* and generally, does not support a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that

was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's mother and children will endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parent and/or children caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.